IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition Nos.39110,39111 and 39112 of 2002

S.Murugesan .. Petitioner in W.P.No.39110 of 2002

B.Mohamed Usman .. Petitioner in W.P.No.39111 of 2002

P.Jayapal .. Petitioner in W.P.No.39112 of 2002

Versus

1. Secretary to Government,
   Municipal Administration and
   Water Supply Department,
   Fort St. Geoerge,
   Chennai - 600 009.

2. The Secretary to Government,
   Finance Department,
   Fort St. George,
   Chennai - 600 009.

3. The Commissioner of Municipal Administration,
   Chepuak, Chennai - 600 005.

4. The Municipal Commissioner,
   Corporation of Salem, Salem.

5. The Examiner of Local Fund Accounts,
   Anna Salai, Chennai - 600 002. .. Respondents

Writ Petitions filed under Article 226 of the Constitution of India as stated therein.

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For Petitioners : Mr.K.Sridhar

For Respondents : Mr.C.Thirumaran,
Government Advocate for R1 to R3
Mr.G.Sankaran for R4

C O M M O N O R D E R

Since the facts and circumstances and the issues raised in the above writ petitions are the same, a common order is passed.

2. The writ petitions have been filed for the issuance of writs of Mandamus to forbear the respondents 1 to 5 from initiating any recovery proceedings against the petitioners from their salary or pensionary benefits or gratuity in respect of amounts paid towards revised pay scales, from 1.4.1986, pursuant to the orders of the fourth respondent, the Commissioner of Salem Municipality, now Corporation of Salem, in his proceedings E1/33194/88, dated 29.9.1988, and to direct the respondents 1 to 5 herein to pay the petitioners' full pension and the gratuity amounts and other benefits due, along with the arrears, with 18% interest for the delay in payment.

The brief facts of the cases, as stated by the petitioners, are as follows:

3. The petitioners joined municipal Service in the Salem Municipality as Switch Board Operators in the year 1968. The petitioners had passed S.S.L.C. course with ITI qualification as required for the trade of Wireman/Switch Board Operator. The petitioners were appointed by the Appointment Committee of the Salem Municipality, having been called through the Employment Exchange. In 1994, the Salem Municipality was notified as a Corporation and the petitioners had opted to be absorbed in the service of the Corporation. The petitioners were working as Skilled Assistant Grade I in the Salem Corporation till 30.6.2001 (W.P.No.39110 of 2002), 30.6.2002 (W.P.No.39111 of 2002) and 31.10.2001 (W.P.No.39112 of 2002) respectively, the date of their retirement.

4. The petitioners were placed in the basic pay scale of Rs.555-970, with effect from 1.10.1984, as per the recommendation of the IV Pay Commission in G.O.Ms.No.555, Finance (Pay Cell), dated 10.6.1985. In G.O.Ms.No.762, Finance, dated 20.8.1986, the Government, on the recommendations made by the 'One Man Commission', had directed the prescribing of certain qualification for all trade posts in the respective Departments and it had also revised their pay scales. Pursuant to the order issued in G.O.Ms.No.762, Finance, dated 20.8.1986, the pay of the petitioners were fixed with effect from 1.4.1986, vide proceedings of the Salem Municipal Commissioner, dated 29.9.1988.

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5. By the proceedings of the first respondent in 32744/E4/89/10, dated 23.8.1991, read with the letter of the Commissioner of Municipal Administration in 99188/89/F1, dated 25.11.1991, orders have been issued for recovering the amounts paid to the petitioners and to other similarly placed persons. The Municipal Commissioner, Salem, in his proceedings, dated 29.9.1988, had redetermined and had fixed a lower scale of pay, without prior notice. Based on certain clarifications issued, the Director of Municipal Administration had issued a circular in Roc.No.99188/89/F1, dated 25.11.1991, instructing the Executive Authorities of Municipality/Township Committee to withdraw the higher scale of pay granted to some of the trade posts without obtaining the orders of Government in G.O.Ms.No.762, Finance, dated 20.8.1986, in accordance with the instruction/clarification issued in letter No.32744/E4/89-10, dated 23.8.1991. When the matter was agitated before the Tamil Nadu State Administrative Tribunal, Chennai, in O.A.No.4553 of 1991 and O.A.No.926 of 1992, the Tribunal by a Common Order, dated 2.8.1994, had directed that it was the duty of the Municipal Commissioner to obtain the necessary orders from the Government for sanctioning of the revised scales of pay. The Tribunal had also issued certain directions with regard to the recovery of payments already made. However, no sanction had been obtained by the Government so far, as directed by the Tribunal. Instead, the petitioners and other similarly placed persons have been threatened with recovery proceedings and the petitioners are being paid only the provisional pension from 30.6.2001, which is the date of their superannuation.

6. In the counter-affidavit filed on behalf of the fifth respondent, it has been stated that based on the recommendations of the 'One Man Commission', orders were issued in G.O.Ms.No.762, Finance (Pay Cell), dated 20.8.1986, allowing the revised scales of pay to the trade posts, notionally, with effect from 1.10.1984, with monetary benefits from 1.4.1986 with a condition that the candidates should possess the qualifications as prescribed. According to the said Government Order, the concerned Heads of the Department were requested to send necessary proposals for revision of the pay scales of such posts. However, the Commissioner, Salem Municipality, which had subsequently become a Corporation, in his order No.E1/33194/88, dated 29.9.1988, had passed an order for the revision of the pay scales to be paid to the petitioners, notionally, with effect from 1.10.1984, with monetary benefits from 1.4.1986. In the Government Lr.No.32744/E4/89-10, dated 23.8.1991, Municipal Administration and the Water Supply Department and CMA.Lr.No.99188/89/E1, dated 25.11.1991, it had been specifically mentioned that the local bodies should not implement the orders issued in G.O.Ms.No.762, Finance (Pay Cell), dated 20.8.1986, without obtaining the sanction of the Government. Therefore audit objections were raised in the Audit Report for the year, 1990-1991, and in the subsequent years. There were questions raised with regard to the prescribed qualifications, as applicable to the petitioners.

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7. It has been stated by the petitioners that the retirement benefits for the petitioners had not been paid due to the recovery proceedings proposed to be initiated against the petitioners. Therefore, they have been put to irreparable monetary loss and severe mental agony.

8. The learned Government Advocate appearing on behalf of the respondents states that G.O.Ms.No.762, Finance (Pay Cell) Department, dated 20.8.1986, is not applicable to the petitioners, as it does not apply to Switch Board Operators.

9. On a perusal of the records available and based on the submissions made by the learned counsel appearing on behalf of the petitioners as well as the learned Government Advocate appearing on behalf of the respondents, it is seen that the revised pay scales have been fixed and the petitioners have been paid accordingly.

10. In the said circumstances, this Court is of the considered view that the amounts paid in accordance with the revised pay scales cannot be recovered from the petitioners, unless they have submitted an undertaking that it would be repaid, if it was found to be wrongly fixed.

11. The learned Government Advocate appearing on behalf of the respondents could not show that such an undertaking had been given by the petitioners when they had received the revised pay scales. However, since it has been contended that G.O.Ms.No.762, Finance (Pay cell), dated 20.8.1986, would not be applicable to the petitioners, the retirement benefits due to the petitioners may not be calculated, as admitted by the petitioners at this stage of the case, based on the said Government Order.

12. Therefore, the writ petitions are allowed to the extent that the respondents are restrained from initiating any recovery proceedings against the petitioners, with regard to the amounts paid to them based on the revised pay scales, pursuant to the orders of the fourth respondent made in proceedings No.E1/33194/88, dated 29.9.1988. Further, the respondents are directed to pay the pensionary benefits, otherwise due to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary,
   Municipal Administration and
   Water Supply Department,
   Fort St. Geoerge,
   Chennai - 600 009.

2. The Secretary,
   Finance Department,
   Fort St. George,
   Chennai - 600 009.

3. The Commissioner of Municipal Administration,
   Chepuak, Chennai - 600 005.

4. The Municipal Commissioner,
   Corporation of Salem, Salem.

5. The Examiner of Local Fund Accounts,
   Anna Salai, Chennai - 600 002.

+ 3 CCs to Mr. K.Sridhar, Advocate SR NOS 60456

+ 3 CCs to the Government Pleader SR NOS 60776, 60777 and 60775

W.P.Nos.39110,39111
and 39112 of 2002

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